

IN THE IOWA DISTRICT COURT FOR POLK COUNTY

THE STATE OF IOWA, ex rel.)
THOMAS J. MILLER, ATTORNEY GENERAL)
99AG25112)

Plaintiff,)

v.)

AFFINION GROUP, INC.,)

TRILEGIANT CORPORATION,)

and)

WEBLOYALTY.COM, INC.,)

Defendants.)

EQUITY NO. CE 075223

PETITION

Plaintiff, the State of Iowa ex rel. Attorney General Thomas J. Miller, by Special Assistant Attorney General William L. Brauch, brings this action against Defendants for violating the Iowa Consumer Fraud Act, Iowa Code section 714.16, as follows:

JURISDICTION AND VENUE

1. This action is brought by the State of Iowa ex rel. Attorney General Thomas J. Miller, pursuant to the provisions of the Iowa Consumer Fraud Act, Iowa Code section 714.16.

2. This Court has jurisdiction over the Defendants pursuant to Iowa Code section 714.16, because the Defendants transacted business within the State of Iowa at all times relevant to this Petition.

3. Venue for this action properly lies in Polk County, Iowa, pursuant to Iowa Code section 714.16(10), because the Defendants transact business in Polk County, Iowa

and/or some of the transactions out of which this action arose occurred in Polk County, Iowa.

PARTIES

4. Plaintiff is the State of Iowa ex rel. Attorney General Thomas J. Miller.
5. The Attorney General of Iowa is charged, inter alia, with the enforcement of the Consumer Fraud Act, Iowa Code section 714.16(7)
6. Defendant Affinion Group, Inc. ("Affinion") is a privately held corporation and is the parent company of Trilegiant Corporation ("Trilegiant") and Webloyalty.com, Inc. ("Webloyalty").
7. Defendant Trilegiant is a Delaware corporation, headquartered in Stamford, Connecticut, which markets to consumers throughout Iowa. Trilegiant is a wholly-owned subsidiary and operating company of Affinion.
8. Defendant Webloyalty.com, Inc., is a Delaware corporation, headquartered in Stamford, Connecticut, which markets to consumers throughout Iowa. Webloyalty.com, Inc., is a wholly-owned subsidiary of Affinion.
9. Defendants Affinion Group, Inc., Trilegiant Corporation, and Webloyalty.com, Inc., are hereafter referred to collectively as "defendants."
10. Whenever reference is made in this Petition to any act of defendants, that allegation shall mean that each defendant acted individually and jointly with the other defendants.
11. At all relevant times, each defendant committed the acts, caused or directed others to commit the acts, ratified the acts, or permitted others to commit the acts alleged in this Petition. Additionally, some or all of the defendants acted as the agent of the other

defendants, and all of the defendants acted within the scope of their agency if acting as an agent of another.

DEFENDANTS' BUSINESS PRACTICES

12. Defendants have together created and carried out a marketing scheme that violates the Iowa Consumer Fraud Act, Iowa Code section 714.16. Through this scheme, defendants have misled consumers into becoming members of various membership programs defendants sell without the consumers' knowledge or consent. These membership programs include, but are not limited to, AutoVantage, AutoVantage Gold, Buyers Assurance, Complete Home Enhanced, Complete Savings, Everyday Cooking at Home, Great Fun, HealthSaver, Identity Theft Protection, LiveWell, Privacy Guard, Reservation Rewards, Shopper Discounts, Rewards Travelers Advantage, and Value Plus. Consumers are either charged an annual fee ranging from approximately \$49.99 to at least \$139.99 yearly or a monthly fee of \$8.00 to at least \$15.99 per month for membership in these membership programs.

13. Defendants have entered into contracts with retail businesses, merchants and financial institutions ("marketing partners") that permit defendants to solicit the marketing partners' customers directly on the marketing partners' websites with a discount or other incentive offer.

14. After the customer makes a purchase from the marketing partner, defendants generally offer a discount on the customer's current or next purchase from the marketing partners.

15. This offer appears to come from the marketing partner, but in reality it comes from defendants; accepting the offer typically results in the customer becoming a member of one of defendants' membership programs. Customers often do not realize the consequences of accepting the offer, because there is only an inconspicuous statement in small print that states that accepting the offer authorizes defendants to bill the consumer's

credit card or other payment method for membership in defendants' membership program.

16. Consumers were not required to affirmatively select a billing option, or take any other meaningful affirmative step, that would help to ensure that they knowingly were joining one of defendants' membership programs and authorizing defendants to bill them for the membership. Rather by accepting the offer, consumers unknowingly were billed for and enrolled in one of defendants' fee-based membership programs using billing information passed from defendants' marketing partners to defendants. This process is often referred to as "Data Pass."

17. Furthermore, defendants' solicitations did not clearly and conspicuously disclose that consumers would not receive the incentive automatically and instead would be required to take additional steps to receive the incentive, which resulted in many consumers never receiving the incentive benefits.

18. In addition to using Internet solicitations with marketing partners, defendants also partner with their marketing partners to solicit consumers through direct mail solicitations. In a "Live Check" solicitation, defendants sent a check for a small amount that, upon being cashed by the consumer, would obligate the consumer to pay for a good or service, unless the consumer cancels the transaction.

19. Customers are enrolled in defendants' memberships for a "free" trial period, regardless of the method (Internet or direct mail) of enrollment. If the customer takes no steps to affirmatively cancel the membership during the trial period, the customer is thereafter billed on a continuing periodic basis unless or until the consumer affirmatively cancels. Many consumers do not realize they are being enrolled in a trial membership and thus, are unaware of the need to cancel the membership to avoid being charged.

20. When such consumers discover the unexpected charges on their credit or debit cards, they typically attempt to contact defendants. Often the number provided on consumers' billing statements directs the consumer to a pre-recorded message which

sometimes asks for additional personal information, which many consumers are reluctant to give. Therefore many consumers are unable to even contact defendants to cancel.

21. If consumers are able to speak to defendants' representatives about the unauthorized charges, defendants typically simply cancel the consumer's membership without offering a refund for prior months' charges. If the consumer requests a refund, the customer service representative often informs the consumer that he or she is not eligible for a refund. If the consumer persists, the customer service representative may offer a partial refund but only rarely will a full refund be provided.

APPLICABLE STATUTES

22. Iowa Code section 714.16(2)(a), states in relevant part as follows:

The act, use or employment by a person of an unfair practice, deception, fraud, false pretense, false promise, or misrepresentation, or the concealment, suppression, or omission of a material fact with intent that others rely upon the concealment, suppression, or omission, in connection with the lease, sale, or advertisement of any merchandise or the solicitation of contributions for charitable purposes, whether or not a person has in fact been misled, deceived, or damaged, is an unlawful practice.

23. As used in the Consumer Fraud Act, the term "person" includes:

any natural person or the person's legal representative, partnership, corporation (domestic and foreign), company, trust, business entity or association, and any agent, employee, salesperson, partner, officer, director, member, stockholder, associate, trustee or cestui que trust thereof.

Iowa Code section 714.16(1)(j).

24. Neither all nor any part of the application for injunctive relief herein has previously been presented to or refused by any court or justice. Iowa R. Civ. P. 1.1504.

25. In an action by the state, no security shall be required of the state. Iowa R. Civ. P. 1.207.

VIOLATIONS OF LAW

IOWA CONSUMER FRAUD ACT

26. Plaintiff realleges and incorporates by reference herein each and every allegation contained in the preceding paragraphs 1 through 25.

27. Beginning at an exact date unknown to plaintiff, and continuing to the present, defendants have engaged in unfair practices and deception in connection with the sale, lease or advertisement of merchandise to Iowa consumers, including the solicitation of certain memberships, in violation of Iowa Code section 714.16(2)(a) in that defendants:

a. Failed to clearly and conspicuously disclose the actual terms and conditions that applied to their offers and failed to adequately disclose the material terms associated with becoming a member of their membership programs;

b. Used misleading language when offering incentives and trial offers;

c. Misrepresented, through use of marketing partners' names and logos and references to the marketing partner in solicitations, that consumers are receiving solicitations from the marketing partner, and that defendants' products and services are endorsed, guaranteed or provided by the marketing partner rather than defendants, when in fact, the solicitations are sent by defendants, not the marketing partner, and the marketing partner generally disclaims any responsibility for the membership programs;

d. Offered nominal checks or rewards to consumers in the form of Live Check solicitations or internet solicitations without adequately disclosing that accepting these offers or cashing these checks would automatically enroll a consumer in a membership program and that the fee for such program will automatically be charged to the

consumer's credit card, debit card, or bank account unless the consumer affirmatively takes steps to cancel the membership;

e. Failed to disclose in an adequate manner that defendants' marketing partners enable and allow defendants to contact the marketing partners' customers and charge defendants' membership fees to consumers' accounts without the consumer having to provide any account or billing information directly to defendants;

f. Without adequately disclosing that automatic renewal billing would apply if a consumer joined defendants' membership programs, continued to bill members on an automatic renewal basis until consumers cancelled membership in the membership program;

g. Represented that consumers can cancel their membership after the trial period, when in fact, in some instances, consumers cannot even contact defendants and when they do, cancellation often occurs only after repeated requests by the consumer.

Moreover, membership fees have continued to appear on some consumers' credit card or debit card bills or bank account statements, even after consumers have called to cancel;

h. Used Data Pass in marketing to sign up consumers to membership programs consumers do not know they are joining;

i. Failed to obtain adequate consent from consumers prior to and during enrollment in defendants' membership programs;

j. Used deceptive billing practices;

k. Failed to send post-Enrollment communications to consumers who enrolled in defendants' membership program via online or direct mail which properly disclose the material terms of defendants' membership programs;

l. Failed to send communications to consumers, regardless of the method of enrollment in defendants' membership program which properly disclose the benefits associated with and changes in terms for defendants' membership programs;

m. Automatically renewed memberships at the expiration of each periodic (whether annual or monthly) membership period and charging consumers' accounts for the renewals when the renewals were not actually ordered or requested by the members, and without the advance consent of the consumers;

n. Failed to use adequate notices on third-party billing statements sent to consumers regardless of the method of enrollment in defendants' membership program;

o. Failed or refused to remove unauthorized charges from consumers' accounts; and,

p. Used inappropriate cancellation, "save" and refund practices and procedures when consumers contacted defendants to try to cancel their membership in defendants' membership programs.

REMEDIES

28. Iowa Code section 714.16(7), in relevant part, provides:

If it appears to the attorney general that a person has engaged in, is engaging in, or is about to engage in a practice declared to be unlawful by this section, the attorney general may seek and obtain in an action in a district court a temporary restraining order, preliminary injunction, or permanent injunction prohibiting the person from continuing the practice or engaging in the practice or doing an act in furtherance of the practice. The court may make orders or judgments as necessary to prevent the use or employment by a person of any prohibited practices, or which are necessary to restore to any person in interest any moneys or property, real or personal, which have been acquired by means of a practice declared to be unlawful by this section, including the appointment of a receiver in cases of substantial and willful violation of this section.

. In addition to the remedies otherwise provided for in this subsection, the attorney general may request and the court may impose a civil penalty not to exceed forty thousand dollars per violation against a person found by the court to have engaged in a method, act, or practice declared unlawful under this section; provided, however, a course of conduct shall not be considered to be separate and different violations merely because the conduct is repeated to more than one person. In addition, on the motion of the attorney general or its own motion, the court may impose a civil penalty of not more than five thousand dollars for each day of intentional violation of a temporary restraining order, preliminary injunction, or permanent injunction issued under authority of this section. A penalty imposed pursuant to this subsection is in addition to any penalty imposed pursuant to section 537.6113. Civil penalties ordered pursuant to this subsection shall be paid to the treasurer of state to be deposited in the general fund of the state.

29. Iowa Code section 714.16(10) provides:

In an action brought under this section, the attorney general is entitled to recover costs of the court action and any investigation which may have been conducted, including reasonable attorneys' fees, for the use of this state.

REQUEST FOR RELIEF

WHEREFORE, Plaintiff respectfully requests that this Court enter an order:

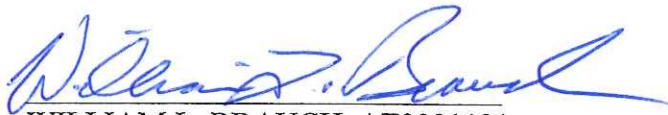
- A. Issuing a permanent injunction prohibiting Defendants, their agents, employees, and all other persons and entities, corporate or otherwise, in active concert or participation with any of them, from engaging in unfair, deceptive or misleading conduct, as provided by Iowa Code section 714.16(7);
- B. Ordering Defendants to make such orders or judgments as may be necessary to restore to any person in interest any money or property which may have been acquired by means of an unlawful practice under Iowa Code section 714.16, as provided by Iowa Code section 714.16(7);
- C. Ordering Defendants each to pay civil penalties of up to \$40,000 for each violation of the Consumer Fraud Act, as provided by Iowa Code section 714.16(7);

D. Ordering Defendants to pay all costs, court costs, and attorney fees for the prosecution and investigation of this action, as provided by Iowa Code section 714.16(11); and,

E. Granting such other and further relief as the Court deems equitable and proper.

Respectfully submitted,

STATE OF IOWA ex rel.
ATTORNEY GENERAL
THOMAS J. MILLER



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